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HAROLD B. WILLEY, Cler

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 238

CHARLES B. McGEE,

Appellant,

vs.

STATE OF NORTH CAROLINA

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

PETITION FOR REHEARING

MAURICE A. WEINSTEIN,
RICHARD M. WELLING,
Counsel for Appellant.

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The appellant herein does hereby petition the Supreme Court of the United States pursuant to Rule 33 of the Rules of the Supreme Court of the United States, for a rehearing of the appeal of the appellant, which appeal was dismissed for want of a substantial federal question by order dated the 12th day of October, 1953, on the following grounds:

1. That the appeal herein presented the following question:

Does the prohibition in the ordinance of the City of Charlotte against exhibiting motion pictures for compensation between the hours of 6:30 p. m. and 9:00 p. m. o'clock on

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Sundays in said city in its purpose, on its face, and as construed, applied, and enforced amount to an unreasonable and unwarranted exercise of the police power; is said ordinance arbitrary, unreasonable, and discriminatory; does it unlawfully deprive defendant of his rights, liberties, and freedoms guaranteed by the due process clause of the Fourteenth Amendment and does it abridge the right of freedom of worship, in that it is an attempt to legislate respecting religion, contrary to the First and Fourteenth Amendments to the United States Constitution.

2. That the Supreme Court of North Carolina has decided a federal question of substance in this case not heretofore determined by the Supreme Court of the United States.

3. That the Supreme Court of North Carolina has decided an important question of federal law, which has not been, but should be, settled by the Supreme Court of the United States.

4. That the Supreme Court of North Carolina has rendered a decision herein that is in conflict with a decision of the Supreme Court of Kentucky in a similar case presenting substantially the same facts. In the case of *City of Harlan* v. *Scott*, 290 Ky. 585, 162 S. W. (2) 8 (1942), the Supreme Court of Kentucky held as follows:

> "While Sunday prohibitory laws have a religious origin, they are held constitutional not on religious grounds but only upon the theory that the establishment of a compulsory day of rest is a legitimate exercise of the police power, and the inhibition is against laboring, or causing employees to engage in labor, on Sunday, not against the business itself.
>
> "The remaining question then is as to the validity of an ordinance prohibiting operation during certain hours on Sunday. In considering this question Sunday must be regarded as any other day since, as pointed out, no prohibition on religious grounds is sus-

tainable. The question then is, may city ordinances forbid the operation of a picture show on any day or days of the week after 6:00 P. M. This, of course, depends on whether such a regulation is reasonable or arbitrary—regulation of hours for the conduct of a legitimate business must be reasonable and may not be rested upon assumed or imaginary grounds for which there is no foundation and, to be sustainable, any regulation of a legitimate business must tend in some degree towards the preservation of the public health, morals, safety, or welfare of the people.—We are unable to imagine how the closing of shows at 6:00 P. M. on any particular day of the week would tend in any degree towards the prevention of offenses or the preservation of health, morals, safety, or welfare of the people. A closing at this hour on Sunday might tend to encourage attendance at divine services, but, as heretofore indicated, such regulatory or prohibitive legislation has never been upheld on religious grounds."

5. That the uncontradicted evidence as shown in the statement as to jurisdiction proved beyond all doubt that the stated purpose of the ordinance in question was to close the place of business of the appellant on religious grounds, all contrary to the First Amendment of the Constitution of of the United States as made applicable to the states by the Fourteenth Amendment.

6. That the decision of the Supreme Court of North Carolina herein has decided a federal question in conflict with *McCollum* v. *Board of Education*, 333 U. S. 203, and in conflict with the principles laid down by the Supreme Court of the United States in the case of *Everson v. Board of Education*, 330 U. S. 1.

7. That the ordinance involved presents a substantial federal question in that said ordinance deprives the appellant of his rights, liberty, and freedom, and of his property without due process of law; and that said ordinance denies the appellant the equal protection of the laws, all in viola-

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tion of the Fourteenth Amendment of the Constitution of the United States.

8. That the Chief Justice of the Supreme Court of North Carolina, on the 27th day of July, 1953, allowed the appeal herein to the Supreme Court of the United States.

WHEREFORE, the appellant prays the Court that it rehear its order of dismissal herein and find that a substantial federal question is involved, and further prays that the judgment of the Supreme Court of North Carolina herein, be reviewed by the Supreme Court of the United States, and that same be reversed.

Respectfully submitted,

MAURICE A. WEINSTEIN,
Liberty Life Bldg.,
Charlotte, N. C.;

By RICHARD M. WELLING,
Law Building,
Charlotte, N. C.,
Counsel for Appellant.

October 26, 1953.

Certificate

We, the undersigned, being counsel for the appellant herein, do hereby certify that the foregoing petition is presented in good faith and not for purposes of delay.

MAURICE A. WEINSTEIN,
RICHARD M. WELLING,
Counsel for Appellant.